

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1469 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KESHAVLAL MANEKLAL SHAH C/O KIRIT C SHAH

Appearance:

MR HS MUNSHAW for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 09/09/98

ORAL JUDGEMENT

Heard Mr Munshaw for the petitioner and Mr Rathod for the respondent. RULE. Rule is made returnable forthwith. Mr Rathod waives service of Rule on behalf of

the respondents. Heard the learned advocates for the parties.

The respondent herein was lastly working as Assistant Traffic Inspector under the petitioner-Corporation before he retired in July 1989. The respondent initially joined as a conductor and was subsequently promoted to that post and there is no dispute between the parties that he was a workman at all material times within the definition of the concept under the Industrial Disputes Act, 1947. After his retirement in the month of July 1989, he filed an application under section 33(C)(2) of the Industrial Disputes Act, 1947, (herein after referred to as the Act) being Recovery Application No.810 of 1990 before the Presiding Officer, Labour Court, Ahmedabad, and in that application he claimed certain over time payments which were not paid to him during the years 1977-1989.

2 When notice was issued to the petitioner-corporation, they filed a statement in the Labour Court. As against the claim of the workmen to the tune of Rs.1,52,410, they accepted the liability to the tune of Rs.49,098.25. Two tabulated statements to that effect signed by the Divisional Controller (Research) were filed by the petitioner in that behalf. Those statements were accepted by the respondent-workman. The learned Presiding Officer of the Labour Court entertained that application to the extent of Rs.49,098.25 and directed the petitioner-corporation to pay that amount with interest at the rate of 10% from 22.3.1990, that is the date of the filing of the application. The petitioner-corporation has challenged that award dated 25.2.1997 by filing this petition which is also filed belatedly on 3rd March 1998.

3 Mr Munshaw, learned counsel for the petitioner, submitted that the claim of the workman was a belated one and ought to have been rejected on the ground of laches. He relied upon the judgement of single judge of this Court (Calla, J.) reported in 1996 (2) GLH 161 in the case of ESI SCHEME v. NATWARLAL AMRUTLAL SHAH. In that case, the application for over time had been filed under section 33(C)(2) of the Act belatedly and there was a delay of 17 years in filing that application and no explanation was given for filing it except that the workman was not much educated and had no knowledge of law. That application had been entertained by the learned judge of the Labour Court and that order came to be quashed in the aforesaid judgement of the learned single judge. The learned judge held, "The proceedings

under section 33-C (2) of the Industrial Disputes Act initiated in the year 1990 in respect of over time for the period from 1973 to 1986 therefore should not have been entertained by the Labour Court merely because the Limitation Act is not applicable unless it could come to the conclusion that the delay has been reasonably explained." In the present case also the overtime for the period 1977-89 is sought to be claimed by filing an application in the year 1990. When one peruses the judgement of the learned single judge, there is a reference to the judgement of the Honourable Supreme Court in the case of Bombay Gas Company reported in AIR 1964 SC 752 and it is stated, "... support was sought to be taken from earlier decision of the Supreme Court in Bombay Gas Company's case [AIR 1964 SC pg.752] holding that the claim which was barred by time under the Payment of Wages Act can be made under section 33-C(2) of the I.D.Act. Thus this decision also does not lay down any such proposition of law that the case where no limitation is prescribed the party can approach or initiate proceedings under Section 33-C(2) of the I.D. Act at any time without explaining the delay." With due respect to my brother, he has not noted the observations made by the Hon'ble Supreme Court in para 13 of that judgement which reads as follows:-

"A claim under S. 33C(2) is a claim for wages within the meaning of the payment of Wages Act. It is, no doubt, somewhat anomalous that a claim, which would be rejected as barred by time if made under the Payment of Wages Act, should be entertained under S.33C (2) of the Act; but this apparent anomaly does not justify the introduction of considerations of limitation in proceedings under S.33C(2). It is necessary to bear in mind that though the legislature knew how the problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting S.33C (2). The failure of the legislature to make any provision for limitation cannot be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature deliberately did not provide for any limitation under S.33C (2)."

(underlining added)

It is also material to note that in that very volume, the judgement of the Constitution Bench in the case of CENTRAL BANK OF INDIA V. P.S. RAJAGOPALAN AIR

1964 SC 743 is also reported and in that judgement on page 752 the Hon'ble Supreme Court has stated on facts of that case and on law as follows:-

"It is true that though the Sastry Award was passed in 1953 and the Labour Appellate Tribunal's decision was pronounced in 1954 and it became final on October 21, 1955, the respondents did not make their claims until 1962. We have had occasion in the past to emphasise the fact that industrial adjudication should not encourage unduly belated claims; but, on the other hand, no limitation is prescribed for an application under S.33C(2) and it would, on the whole, not be right for us to refuse an opportunity to the respondents to prove their case only on the ground that they moved the Labour Court after considerable delay."

(underlining added)

4 The nature of these proceedings also came to be considered by the Hon'ble Supreme Court later on in Central Inland Water Transport Corporation Ltd. v. Workmen reported in AIR 1974 SC 1604 where the Hon'ble Supreme Court held that these proceedings are in the nature of execution proceedings and the observations made in para 12 of the said judgement are as follows:-

"A proceeding under Section 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money."

None of these judgements are considered by the learned single judge and the view taken by him is exactly contrary to the long standing judgement of the Hon'ble Supreme Court in the cases of Bombay Gas Company & Central Bank of India (supra). The Labour Court exercising the jurisdiction under section 33-C(2) has to examine the claim of the workman on merits even though the application is filed after a considerable delay and the consideration of limitation and requirement of explaining the delay cannot be introduced therein. Recently, in the case of Bombay Telephone Canteen Employees Association v. Union of India reported in 1997 (2) LLJ 647 a Bench of the two Judges of the Hon'ble Supreme Court held that the Telecom Department was not an

industry and on a Reference being made to a Bench of 3 Judges in the case of General Manager, Telecom v. Srinivas Rao reported in 1998 1 LLJ 255, the Hon'ble Supreme Court noted that the long standing judgement in the case of Bangalore Water Supply and Sewerage Board reported in 1978 1 LLJ 349 had not been considered by that Bench. The Hon'ble Supreme Court therefore held in Srinivas Rao's case that the judgement in the case of Bombay Telephone Canteen Employees' case cannot be treated as laying down correct law. In that case, the Hon'ble Supreme Court has observed as follows:-

"It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply case (supra) or to bypass that decision so long as it hold the field. Moreover, that decision was rendered long back nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case (supra)."

5 I am aware of the fact that I am sitting singly and the judgement of my brother in the case of ESI Scheme (supra) was rendered when he was sitting as a single judge. However, when the law laid down by the Hon'ble Supreme Court time and again is quite clear and those long standing judgements holding field are not considered in the ESI Scheme (supra) judgement, it will be within my jurisdiction to say so inasmuch as the law laid down by the Hon'ble Supreme Court binds the High Court under Article 141 of the Constitution of India. In the circumstances, it will have to be stated that the proposition laid down in the case of ESI Scheme (supra) cannot be treated as laying down the correct proposition of law. The order of the Labour Court cannot therefore be faulted for considering the belated claim of hte respondent-workman.

6 Mr Munshaw has however pointed out that in similar matters only 6% interest had been awarded to similarly situated employees. Mr Rathod does not dispute that. Those orders were carried in writ petitions to this Court and all those petitions being SCA No.4560/1995, 1547/95, 1548/95, 1549/95 and 1553/95 were dismissed by this Court confirming the orders of the Labour Court. Mr Munshaw therefore submits that the award may be modified to that extent. For the sake of uniformity, it would therefore be proper that the respondent herein also ought to be awarded only 6%

interest. In the circumstances, the award is modified to that extent that instead of 10% interest the respondent will be entitled to interest at the rate of 6% only. The rest of the award is confirmed. Mr Munshaw states that the payment of the awarded amount with 6% interest from 22.3.1990 will be paid to the respondent-workman within one month i.e. on or before 9.10.1998. Rule is made absolute to this limited extent with no order as to costs.

(mohd)